IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

OP.No. 1531 of 2002(G)

PETITIONER:

DR. P. CHANDRASEKHARAN PILLAI,
AGED 43, S/O. SRI.P. PARAMESWARAN PILLAI,
ASSISTANT DIRECTOR, ARTIFICIAL INSEMINATION
CENTRE, PULLAD, PATHANAMTHITTA DISTRICT.
(PRESENTLY RESIDING AT: CHANDRATHEL HOUSE,
VALLAMKULAM EAST P.O., THIRUVALLA).

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, VIGILANCE (B) DEPARTMENT,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF ANIMAL HUSBANDRY
DEPARTMENT, VIKAS BHAVAN, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. P.K.BABU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P.NO.2731 OF 2002 IN O.P.NO.1531 OF 2002

DISMISSED

14/6/07 Sd/-T.R.RAMACHANDRAN NAIR,JUDGE

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE MEMO OF CHARGES NO.2903/B2/93/VIG.DT.27.7.1994.

EXT.P2: COPY OF WRITTEN STATEMENT FILED BY THE PETITIONER DTD 15.11.94.

EXT.P3: COPY OF THE FINAL REPORT IN ENQUIRY CASE NO.3/95.

EXT.P4: COPY OF DEPOSITION GIVEN BY PW15 BEFORE THE ENQUIRY COMMISSION.

EXT.P5: COPY OF CIRCULAR ISSUED BY THE GOVERNMENT FIXING PERCENTAGE OF LIMIT FOR MORTALITY OF BIRDS IN THE FARM.

EXT.P6: COPY OF THE DEPOSITION GIVEN BY PW19(DY. SUPERINTENDENT OF POLICE, KERALA POLICE) BEFORE THE VIGILANCE TRIBUNAL.

EXT.P7: COPY OF MORTALITY REGISTER FOR BROILERS.

EXT.P8: COPY OF THE MORTALITY REGISTER FOR LAYERS.

EXT.P9: COPY OF THE ORDER DTD.16.8.2000 ISSUED BY THE GOVERNMENT IMPOSING PUNISHMENT OF REDUCTION IN STAGE OF THE LOWEST OF THE TIME SCALE APPLICABLE TO THE POST FOR A PERIOD OF FIVE YEARS TO THE PETITIONER.

EXT.P10: COPY OF THE REVIEW PETITION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT DATED 27.10.2000.

EXT.P11: COPY OF THE JUDGMENT DATED 27.7.2001 IN O.P.No.20350/2001.

EXT.P12: COPY OF THE ORDER DATED 21.11.2001 BY THE FIRST RESPONDENT.

TRUE COPY

P.A.TO JUDGE

T.R. Ramachandran Nair, J.

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O.P.NO.1531 of 2002-G

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Dated this the 14th day of June, 2007

JUDGMENT

The petitioner has filed this original petition aggrieved by the orders passed by first respondent, Exts.P9 and P12. The petitioner, while working as Veterinary Surgeon, was issued Ext.P1 memo of charges on various allegations. Ext.P2 is the written statement submitted by him. Thereafter, the Government referred the matter to the Vigilance Tribunal and the Tribunal submitted its report Ext.P3, finding him guilty of the charges along with its recommendations for enabling the Government to proceed further in the matter. Thereafter, proceedings continued by the Government which resulted in Ext.P9 order imposing the punishment of reduction in stage to the lowest of the time scale applicable to the post for a period of five years and to recover from him an amount of Rs.1,17,312.50 being the loss sustained to the Government towards shortage of 3915 birds. The petitioner filed a review petition, Ext.P10, aggrieved by the above order and this court by Ext.P11 judgment directed the Government to pass orders on the same. Accordingly, the Government has passed Ext.P12 order declining interference with Ext.P9. Aggrieved by Exts.P9 and P12, this original

petition is filed.

2. Learned counsel for the petitioner submitted that the Principal Secretary (Home & Vigilance) heard the petitioner on 15.10.2001 but at the same time Ext.P12 is signed by a different officer. It is also pointed out that neither in Ext.P9 nor in Ext.P12 the contentions raised by the petitioner against the acceptance of the findings of the Tribunal have been considered on its merits. Petitioner had raised various points disputing the correctness of the findings but those have not been dealt with, the counsel argued.

3. In Ext.P9, detained reasons have not been stated to support the punishment imposed on him. The Government disposed of the matter with the following words:

> " Government have examined the matter again on the basis of the advice of the Commission and decided to confirm their provisional decision. In the above circumstances Government order that Dr. P. Chandrasekharan Pillai, formerly Veterinary Surgeon, Central Hatchery, Chengannoor be imposed with the punishment of reduction in stage to the lowest of the time scale applicable to the post for a period of five years and to recover from him an amount of Rs.1,17,312.50 (Rupees One Lakh seventeen thousand three hundred and twelve and paise fifty) being the loss sustained to the Government towards the shortage of 3915 birds."

The above order is far from satisfactory. This is a case where an officer was proceeded for various charges and the enquiry was conducted by the Vigilance Tribunal. Against the findings of the Vigilance Tribunal, the

only remedy of the petitioner is to approach the Government and therefore it was incumbent on the part of the Government to consider the contentions raised by the petitioner on its merits, and evaluate the evidence that is relied upon by the Tribunal to support its findings. It is an accepted position that the Government is not bound by the Tribunal's recommendation. There is absolute discretion for the Government in the matter. Any way, the order Ext.P9 is far from satisfactory, as the Government alone is the authority competent to enter a finding on the disputed questions of fact and evidence in the matter. There is no forum available to the officer to challenge the findings of the Tribunal, other than the Government.

4. Even though in the review petition the petitioner had raised various contentions, while considering the review petition also the same has been disposed of in a similar fashion. After stating the main contentions of the petitioner, the matter was disposed of in the following terms:

> " Government have examined the review petition in detail in the light of relevant records. The above arguments put forth by the petitioner have no novelty since those are mere repetitions of what he has stated earlier in his written statement of defence. The Vigilance Tribunal had duly examined all aspects of the case including the above contentions of the accused before arriving at the conclusion that the accused is guilty of the charges against him. As such the contentions of the accused that the Vigilance Tribunal had

not cared to find out how this shortage of 3915 birds occurred and what were the circumstances which led to the shortage of birds and who derived pecuniary benefits is not sustainable.

In the above circumstance Government order that the request of Dr. P. Chandrasekhara Pillai to set aside the G.O. Read as first paper above is rejected and the review petition is disposed of accordingly."

There also his contentions were not considered in detail on its merits. Therefore, the defects that is attributable to the order Ext.P9 looms large as far as Ext.P12 also is concerned. Apart from that even going by the counter affidavit, it is the Principal Secretary who had examined the case based on the hearing note. Therefore, the question is whether he himself had applied his mind in the matter and passed the order. In the counter affidavit, as regards this issue, what is stated is that as per the Rules of business governing the issuance of orders regarding finalisation of disciplinary proceedings initiated on the basis of Vigilance reports, the Commissioner and Secretary, Vigilance Department is the authorised officer to sign the orders on behalf of the Governor of Kerala. It was by virtue of this power conferred by the Rules, that Ext.P12 order was signed and issued by the Principal Secretary in the Vigilance Department. These averments, according to me, have not properly dealt the contentions raised by the petitioner in the original petition. I am not finally pronouncing on the matter, as the review petition is directed to be considered afresh for other

reasons stated above. For all these reasons, I quash Ext. P12.

5. It is submitted that the petitioner is seriously ill and therefore he may be allowed to appear through a lawyer before the first respondent. The said request is allowed. It is also submitted that going by Ext.P9, the punishment of reduction in stage to the lowest of the time scale was for a period of five years and the same is over now, but the petitioner is not being given the monetary benefits which is due to him on completion of the period of five years. The petitioner is free to move by way of appropriate representation for the said relief before the competent authority and if such a representation is received, the same will be considered in accordance with law and appropriate reliefs will be granted to him in that matter, if the period of punishment in Ext.P9 is already over as contended by the petitioner.

6. Therefore, the original petition is disposed of with a direction to the first respondent to hear and dispose of Ext.P11 review petition within a period of three months from the date of receipt of a copy of this judgment after affording an opportunity for hearing to the petitioner through his counsel. The interim order passed in this case will continue till orders are passed and communicated to him. Needless to say that the petitioner will be released the monetary benefits which he claims, if found eligible, after examination by the competent authority, within a period of two months

since it is submitted that the petitioner is afflicted with serious illness presently.

The original petition is disposed of with the above directions. NO costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.1531 of 2002-G

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JUDGMENT

14th day of June, 2007